

JUDGMENT

- 1) This is a suit for recovery of Rs. 1,14,000/- only for malicious prosecution.
- 2) Plaintiff's case, in brief, is that defendant maliciously, falsely and without any reasonable cause filed an ejahar in the Bagribari police station on 18/7/2009 against plaintiff stating that plaintiff had tortured and confined his sister i.e. wife of plaintiff. The Bagribari police on receipt of ejahar from the defendant registered a case being the no. Bagribari P.S. Case no. 74/2009, u/s 498(A)/323/34 IPC against plaintiff and his brother and launched investigation of the case. During the period of investigation of the case, police had arrested accused/plaintiff, forwarded to the court and detained in Kokrajhar Jail for 19 days. On completion of investigation of the case, the Bagribari police laid charge sheet of the case u/s 498(A)/323 IPC against accused/plaintiff (G.R. case no. 760/2009) before the learned CJM, Kokrajhar. the learned CJM, Kokrajhar, after having heard both sides and considering the material on record framed charge of the case u/s 342/323 IPC against accused/plaintiff which accused/plaintiff denied. The learned CJM, Kokrajhar, after completion of evidence and upon hearing both sides, acquitted the accused/plaintiff vide its Judgment and order dated 25/10/2010 holding that prosecution side failed to establish the charge u/s 342/323 IPC against accused.
- 3) It is contended that plaintiff suffered injury to his reputation and had undergone pecuniary loss in defending the said criminal prosecution. It is further stated that plaintiff demanded Rs. 1,14,000/-(in total) as compensation from the defendant through advocate's registered post with AD as a consequence of the aforesaid malicious prosecution of the defendant; but the defendant in spite of receiving the said notice has not paid plaintiff the demanded money.
- 4) Hence, plaintiff prayed to pass decree against defendant to pay a sum of Rs. 30,000/ for expenses of conducting/defending the criminal case, a sum of Rs. 9,000/- as working loss for remaining in Jail and appearance in the court during trial stage, a sum of Rs. 25,000/- for mental shock, pain along with physical injury and a sum of Rs. 50,000/- as loss of prestige and reputation along with interest till full realization of the decretal amount.
- 5) On appearance, the defendant contested the suit of plaintiff by filing his written statement. The defendant resisted the suit on the ground that there is no cause of action of the suit, the suit is not maintainable and the suit is liable to be dismissed. While denying the allegations of the plaintiff, the defendant also denied the fact that the allegation leveled by the defendant against the plaintiff in the said criminal case were not false, baseless, malicious and without reasonable cause. It is submitted that the defendant had sufficient and reasonable cause for filing/lodging of the criminal case against the plaintiff at the relevant time.
- 6) Upon the pleading of both the parties and on hearing both sides the following issues have been framed :-
 - i) whether there is cause of action for the suit ?
 - ii) whether the suit is maintainable ?
 - iii) whether the defendant had filed a false and malicious criminal case against plaintiff and which was registered as G.R. Case no. 760/2009 ?
 - iv) whether the plaintiff suffered injury to his reputation, pecuniary loss and also suffered physical and mental pain on account of the said malicious prosecution ?
 - v) whether the defendant is liable to compensate the plaintiff on account of the said malicious prosecution ?
 - vi) To what relief/reliefs the plaintiff is entitled ?
- 7) That during evidence plaintiff submitted his evidence-in-affidavit as p.w.-1, Kasem Ali (p.w.-2), Mamir Hussain (p.w.-3) and Shakamal Sheikh (p.w.-4) and they were cross-examined. As a mark of documentary evidence, submitted

certified copy of Judgment dated 25/10/2011 passed by learned CJM, Kokrajhar, in G.R. Case no 760/2009 (ext.-1), copy of pleader notice (ext.-2), copy of death certificate of Sukur Ali (ext.-3) and copy of FIR (ext.-4). Defendant adduced evidence-in-affidavit as d.w.-1, Hanufa Bibi (d.w.-2) and Mahammad Ali (d.w.-3). And as mark of documentary evidence submitted medical report of Hanufa Bibi as ext.-A.

8) I have heard the argument advanced by the learned counsels for both sides. Perused the record and scrutinized the evidence on record.

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF :-

Now, my discussion and decision on the following issues are rendered as follows :-

ISSUE NO.-3

9) Mukul Haque (p.w.-1) stated in his evidence that defendant on 18/7/2009 filed a criminal case against him in the Bagribari police station stating inter-alia therein that accused/plaintiff used to torture his sister i.e. wife of plaintiff and on 10/7/2009, plaintiff had beaten his wife and kept confined his wife till 18/7/2009 in a room without giving any food. The said case was registered and numbered as Bagribari police case no. 74/2009 (G.R. Case no. 760/2009) against accused/plaintiff u/s 498(A)/323/34 IPC. During the period of investigation of the case, the Bagribari police arrested accused and forwarded to the court. The then learned CJM, Kokrajhar sent the plaintiff in the jail and plaintiff remained in jail for 19 days. On completion of investigation of the case, the Bagribari police laid charge sheet of the case u/s 498(A)/323 IPC against accused/plaintiff. After having heard both sides and considering the material on record, the learned CJM, Kokrajhar, framed charge u/s 323/342 IPC against accused. The learned CJM, Kokrajhar, after completion of evidence and on hearing both sides, acquitted the accused/plaintiff from the charge u/s 323/ 342 IPC. Ext.-1 is the certified copy of judgment dated 25/10/2011 passed in G.R. Case no. 760/2009.

P.w.-1 further deposed that during the trial, defendant maligned his prestige and reputation in the society by adducing false evidence in the court.

During cross-examination, p.w.-1 stated that Hanufa Bibi is his first wife. On 18/7/2009 defendant lodged complaint against him and police arrested him. Police filed charge sheet against him falsely. He was in the market on that day when police took Hanufa Bibi from his house. He denied the suggestions made by the counsel for defendant side.

10) Kasem Ali (p.w.-2), Mamir Hussain (p.w.-3) and Shah Kamal Sheikh (p.w.-4) stated in their evidence that they know plaintiff, defendant and Hanufa Bibi and they are local residents of village Joypur-II. According to p.w.-2, p.w.-3 and p.w.-4, sister of defendant used to torture plaintiff in many ways after marriage with plaintiff. Plaintiff was a poor and kind man, therefore, Hanufa Bibi was dissatisfied being married with plaintiff and had wished to keep plaintiff as 'Ghar Jamai' (a person stays in father-in-law's house after marriage). Plaintiff refused to stay as 'Ghar Jamai' and therefore, defendant and his sister engaged in conspiracy against plaintiff. P.w.-2, p.w.-3 and p.w.-4 stated that defendant and his sister together intentionally had filed a criminal case against plaintiff and plaintiff had to suffer in that criminal case staying in jail. Plaintiff never tortured Hanufa Bibi and did not confine Hanufa Bibi in a room from 10/7/2009 to 18/7/2009 after beating. They saw Hanufa Bibi moving freely in the house of plaintiff. Further, p.w.-2, p.w.-3 and p.w.-4 stated in their evidence that on 11/7/2009, defendant was present in the house of plaintiff during the time of last rite of plaintiff's father. They stated that defendant met Hanufa Bibi on that day and they did not see Hanufa Bibi confined by plaintiff in a room. P.w.-3 stated that he saw Hanufa Bibi

moving freely in the house of plaintiff till arrival of police in the house of plaintiff for taking Hanufa Bibi on 18/7/2009.

- 11) During cross-examination, p.w.-4 stated that on 18/7/2009, he was on road when police had taken Hanufa Bibi from the house of plaintiff. P.w.-4 stated that he asked police about the incident and he came to know from police that Mukul (plaintiff) had tortured Hanufa Bibi. P.w.-4 claimed that he read copy of Judgment passed in G.R. Case no. 760/2009. However, p.w.-2, p.w.-3 and p.w.-4 denied the suggestions made by the defence counsel on behalf of defendant.
- 12) Hakim Ali (d.w.-1) in his evidence stated that Hanufa Bibi is his younger sister and they gave Hanuf Bibi in marriage to plaintiff on 10/3/2008. He stated that due to ill advised of family members of plaintiff, the plaintiff used to torture Hanufa Bibi and on 29/6/2009, plaintiff demanded Hanufa Bibi to bring Rs. 20,000/- and for being reused to pay Rs. 20,000/- as demanded, plaintiff beat Hanufa Bibi mercilessly. He stated that on receipt of information, he had gone to the house of plaintiff and settled the dispute through a village 'Bichar' (meeting of elderly persons). He stated that again on 10/7/2009, plaintiff beat Hanufa Bibi demanding Rs. 20,000/- and confined in a room for refusing to pay demanded money. Therefore, he lodged an ejahar in the Bagribari police station on 18/7/2009 after receipt of information and he rescued Hanufa Bibi from the house of plaintiff with help of Bagribari police. He stated that the said ejahar was registered as Bagribari police case no. 74/2009, u/s 498(A)/342/34 IPC (G.R. Case no. 760/2009). So, according to defendant, he did not file a false complaint against plaintiff maliciously and without reasonable cause. The investigating officer on completion of investigation of the case submitted charge sheet of the case in the court and after taking evidence and hearing, court acquitted accused/plaintiff due to some legal lacuna.
- 13) During cross-examination, d.w.-1 admitted that he went to the house of plaintiff on 11/7/2009 to take part in the last rite of plaintiff's father. They adduced evidence in G.R. Case no. 760/2009 on received of notices. He denied the suggestions made by the plaintiff's counsel on behalf of plaintiff. However, from the evidence of d.w.-1, it has not come out that on 11/7/2009, he met Hanufa Bibi in the house of plaintiff.
- 14) Hanufa Bibi, d.w.-2, also stated in her evidence that plaintiff used to torture her physically and demanded money from her. She stated that she informed defendant about torture inflicted by plaintiff upon her on 18/7/2009 by phone and asked defendant to rescue her from the house of plaintiff. She said that police had rescued her from locked house of plaintiff along with her child. Defendant did not file a false case against plaintiff maliciously without any basis.
- 15) During cross-examination of d.w.-2, it has not come out that on 11/7/2009, she met people gathered in the house of plaintiff on account of dead of plaintiff's father. She adduced evidence in G.R. Case no. 760/2009. She denied the suggestions made by the plaintiff's counsel.
- 16) From the evidence of Mahammad Ali (d.w.-3), it has established that on 18/7/2009, at about 9 p.m., Bagribari police had gone to his house and taken him to the house of plaintiff for rescuing Hanufa Bibi. Police rescued Hanufa Bibi in his presence. He saw plaintiff on that day, in his house and plaintiff ran away on seeing police in his house. What can be gathered from the evidence of d.w.-3 is that he heard about the occurrence of the incident from defendant and he was a witness in G.R. Case no. 760/2009. He denied the suggestions made by the plaintiff's counsel on behalf of plaintiff.
- 17) Now, on careful perusal of entire evidence of p.w.-1, p.w.-2, p.w.-3 and p.w.-4 together with evidence of defendant side, it is found admitted by the plaintiff that investigating officer in G.R. Case no. 760/2009 laid charge sheet u/s 498(A)/323 IPC against accused/plaintiff. The learned CJM, Kokrajhar, after having heard both sides and considering the material on record framed charge u/s

323/342 IPC against accused. It further appeared from Ext.-1 that after completion of evidence and hearing, the learned CJM, Kokrajhar, on appreciation of evidence, acquitted the accused person wherein the victim woman deposed against the accused. The learned CJM nowhere in the judgment observed / held that the case of prosecution is false or baseless and has been filed malafide intention nor it has been observed that there is no reasonable and probable cause for the proceeding against the accused person. In absence of clear law, it cannot be held that the prosecution against the accused/plaintiff was malicious prosecution. It is relevant to note here that learned investigating officer found a prima-facie evidence against accused for committing offence u/s 498(A)/323 IPC against accused and victim woman also implicated the accused. In such situation, it cannot be said that there is no probable and reasonable cause to institute/file a case against the accused person (plaintiff) and to proceed against him. So, it cannot be said that the present defendant instituted or carried on such proceeding maliciously. It is admitted fact that accused was acquitted in G.R. Case no. 760/2009 from the charges u/s 323/342 IPC which is also evident from ext.-1. Mere innocence of accused/plaintiff is also not prima-facie proof of absence of reasonable and probable cause.

- 18) In India, in action for malicious prosecution, the plaintiff has to prove :-
a) that he was prosecuted by the defendant in a criminal charge, b) that proceeding complained of terminated in his favour, c) that the defendant instituted or carried on such prosecution maliciously i.e. with a malicious intention, d) that there was absence of reasonable and probable cause for such proceeding, and e) that the plaintiff suffered damage. All these allegations must co-exist before a defendant can be liable for malicious prosecution, if any of them is found lacking, the suit must fail. However, in present case, it clearly appears that there is reasonable and probable cause for bringing the criminal case (G.R. Case no. 760/2009) into motion against the accused/plaintiff and the then learned CJM, Kokrajhar, framed charge u/s 323/342 IPC against accused. So, institution of said criminal case cannot be said to have carried on maliciously nor there is any observation in the Judgment (ext.-1) to that effect.
- 12) In view of above discussion and reasons, it is clear that the defendant had not filed a false and malicious criminal case which is registered as G.R. Case no. 760/2009 which though ended in acquittal, I, therefore, answer the issue no.-3 in negative and against the plaintiff.

ISSUE NOS. 4 & 5

- 13) Both the issue nos. 4 & 5 are co-related hence for the sake of convenience these two issues are taken up together for discussion and decision. From the foregoing discussion and decision arrived at issue no.-3, it is clearly appears that the G.R. case no. 760/2009 instituted by the defendant against the plaintiff is not a malicious prosecution nor it is found that the same was filed with malafide intention. So, in such established position, the question of suffering injury by the plaintiff to his reputation and pecuniary loss and suffering from physical and mental injuries on account of the said so called/alleged malicious prosecution does not arise at all and hence, defendant is not liable to compensate the plaintiff on account of malicious prosecution. I therefore, answer the issues nos. 4 & 5 against the plaintiff and in favour of defendant.

ISSUE NOS. 1 & 2

- 14) For the sake of convenience, both the issue nos. 1 & 2 are taken together for discussion and decision. From the above discussion and decisions arrived at issue nos. 3,4 & 5, it is clearly appears that the plaintiff has failed to prove the

allegation that the defendant vide G.R. case no. 760/2009 prosecuted the plaintiff maliciously and it is already observed by me that the question of suffering injury by the plaintiff to his reputation, his physical and mental pain and his pecuniary loss do not arise at all and the defendant is not liable to compensate the plaintiff on account of so called malicious prosecution, so, it is apparently clear that there is no cause of action for the present suit and the suit is not maintainable as well.

15) Accordingly, I decide the issue nos. 1 & 2 against the plaintiff and in favour of defendant.

ISSUE NO.-6

16) All the foregoing issues nos. 1,2,3,4 & 5 have been decided against the plaintiff, so, it is clear that the plaintiff is not entitled to any relief as prayed for. Accordingly I decided the issue no.-6 in negative and against the plaintiff.

ORDER

17) In the result, the suit is dismissed on contest. Hence, the plaintiff is not entitled to any relief as prayed for.

18) Considering the facts and circumstances of the case, I decided the parties to bear their own cost.

Prepare a decree accordingly.

Given under my hand and seal of this court on this 22nd day of
October, 2014.

Typed and corrected by ;-

(Sri N. Boro)